

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Healthcare Facilities Management

4 (Amendment)

5 907 KAR 1:190. Payments for freestanding~~[alternative]~~ birth center-services.

6 RELATES TO: KRS 205.520

7 STATUTORY AUTHORITY: KRS 194.030(2), 194A.050(1), 205.520(3), 42 C.F.R.
8 447.325, 42 U.S.C. 1396a, b, d[, ~~EO 2004-726~~]

9 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004,~~
10 ~~reorganized the Cabinet for Health Services and placed the Department for Medicaid~~
11 ~~Services and the Medicaid Program under the Cabinet for Health and Family Services.~~]

12 The Cabinet for Health and Family Services has responsibility to administer the program
13 of Medical Assistance. KRS 205.520(3) empowers the cabinet, by administrative regula-
14 tion, to comply with any requirement that may be imposed, or opportunity presented, by
15 federal law for the provision of medical assistance to Kentucky's indigent citizenry. This
16 administrative regulation sets forth the method for determining amounts payable by the
17 cabinet for alternative birth center services.

18 Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS
19 314.011(7).

20 (2) "Department" means the Department for Medicaid Services or its designee.

21 (3) "Enrollee" means a recipient who is enrolled with a managed care organization.

1 (4) “Freestanding birth center” means a:

2 (a) Freestanding birth center as defined by 42 USC 1396d(l)(3)(B); and

3 (b) Facility that is licensed as an alternative birth center in accordance with 902 KAR
4 20:150.

5 (5) “Freestanding birth center services” is defined by 42 USC 1396d(28) and 42 USC
6 1396d(l)(3)(A).

7 (6) “Managed care organization” means an entity for which the Department for Medi-
8 caid Services has contracted to serve as a managed care organization as defined in 42
9 C.F.R. 438.2.

10 (7) “Participating freestanding birth center” means a freestanding birth center that is:

11 (a) Currently enrolled in the Medicaid program pursuant to 907 KAR 1:672;

12 (b) Currently participating in the Medicaid program pursuant to 907 KAR 1:671;

13 (c) Licensed in accordance with 902 KAR 20:150; and

14 (d) Authorized to provide the service in accordance with this administrative regula-
15 tion.

16 (8) “Provider” is defined by KRS 205.8451(7).

17 (9) “Recipient” is defined by KRS 205.8451(9).

18 (10) “Rendering provider” means a provider who:

19 (a) Provides a service for which reimbursement is:

20 1. Made to the provider; and

21 2. Not made to a freestanding birth center; and

22 (b) Is:

23 1. A physician who provides a service associated with a freestanding birth center;

1 2. A physician assistant who provides a service associated with a freestanding birth
2 center;

3 3. An advanced practice registered nurse who provides a service associated with a
4 freestanding birth center; or

5 4. A registered nurse who provides a service associated with a freestanding birth cen-
6 ter.

7 (11) "Registered nurse" is defined by KRS 314.011(5).

8 Section 2. General Requirements. (1) For the department to reimburse for a free-
9 standing birth center service, the service shall:

10 (a) Be provided:

11 1. To a recipient; and

12 2. By a:

13 a. Participating freestanding birth center that is currently licensed and operating in
14 accordance with 902 KAR 20:150; or

15 b. Rendering provider;

16 (b) Be covered in accordance with 907 KAR 1:180; and

17 (c) Be medically necessary.

18 (2)(a) A participating freestanding birth center shall comply with:

19 1. 907 KAR 1:671;

20 2. 907 KAR 1:672;

21 3. 902 KAR 20:150; and

22 4. All applicable state and federal laws.

23 (b) A rendering provider shall comply with:

1 1. 907 KAR 1:671;

2 2. 907 KAR 1:672; and

3 3. All applicable state and federal laws.

4 (3)(a) If a participating freestanding birth center or rendering provider receives any
5 duplicate payment or overpayment from the department, regardless of reason, the
6 participating freestanding birth center or rendering provider shall return the payment to
7 the department.

8 (b) Failure to return a payment to the department in accordance with paragraph (a) of
9 this section may be:

10 1. Interpreted to be fraud or abuse; and

11 2. Prosecuted in accordance with applicable federal or state law.

12 (c) Non-duplication of payments and third-party liability shall be in accordance with
13 907 KAR 1:005.

14 (d)1. A freestanding birth center shall comply with KRS 205.622.

15 2. A rendering provider shall comply with KRS 205.622~~[The cabinet shall reimburse~~
16 ~~participating licensed alternative birth centers for covered services rendered eligible~~
17 ~~Medicaid recipients when the services are provided in accordance with the provisions of~~
18 ~~902 KAR 20:150, Alternative birth centers].~~

19 Section 3. Reimbursement. (1)(a) The department shall reimburse a professional fee
20 to a rendering provider for a prenatal visit, a standby service, or a postnatal visit at the
21 lesser of:

22 1. The rendering provider's usual and customary charge for the service;

23 2. The reimbursement for the service pursuant to 907 KAR 3:010 if the rendering pro-

vider is a physician; or

3. Seventy-five (75) percent of the reimbursement for the service pursuant to 907 KAR

3:010 if the rendering provider is:

a. An advanced practice registered nurse;

b. A physician assistant; or

c. A registered nurse.

(b) The department shall:

1. Reimburse for no more than two (2) postnatal visits per recipient; and

2. Not reimburse for a postnatal visit that occurs after six (6) weeks have lapsed since the delivery.

(2) The department shall reimburse a freestanding birth center:

(a) Twenty-five (25) dollars for referring a recipient to an inpatient hospital for delivery services if the freestanding birth center determined before providing delivery-related services that the recipient's delivery was complicated and needed to be handled in an inpatient hospital;

(b) \$156 for:

1. Providing delivery-related services to a recipient; and

2. Determining, after providing delivery-related services to a recipient, that the recipient's delivery was complicated and needed to be handled in an inpatient hospital; or

(c) \$1557 for services related to a complete delivery that occurred at the freestanding

birth center~~2. Payments. (1) Prenatal visits, standby services and postnatal visits billed by~~

~~a birthing center shall be paid at the lower of the billed charge or seventy-five (75) percent~~

~~of the upper limit for physicians for the same services provided on an outpatient basis~~

1 ~~when services are provided by the medical professional (i.e., physician or nurse-midwife~~
2 ~~who is an appropriately licensed and certified advanced registered nurse practitioner).~~
3 ~~Laboratory services shall be paid at the lower of the billed charges or the upper limit for~~
4 ~~physicians.~~

5 ~~(2) The delivery fee payable to the center shall be the facility's usual and customary~~
6 ~~rate not to exceed \$365 per delivery. This fee is inclusive of all costs associated with the~~
7 ~~delivery, including the professional fee for the delivery, necessary supplies and materials,~~
8 ~~and the post-delivery examination].~~

9 ~~(3)(a) The department's reimbursement[Program payment] shall be considered pay-~~
10 ~~ment in full for all services, supplies, and devices provided to a recipient.~~

11 ~~(b)1. A freestanding birth center shall not bill a recipient or party other than the depart-~~
12 ~~ment for a service provided to the recipient if the service was covered by the department.~~

13 ~~2. A rendering provider shall not bill a recipient or party other than the department for a~~
14 ~~service provided to the recipient if the service was covered by the department.~~

15 ~~(4)(a) A managed care organization's reimbursement shall be considered payment in~~
16 ~~full for all services, supplies, and devices provided to an enrollee.~~

17 ~~(b)1. A freestanding birth center shall not bill an enrollee or party other than the enrol-~~
18 ~~lee's managed care organization for a service provided to the enrollee if the service was~~
19 ~~covered by the managed care organization.~~

20 ~~2. A rendering provider shall not bill an enrollee or party other than the managed care~~
21 ~~organization for a service provided to the enrollee if the service was covered by the man-~~
22 ~~aged care organization.~~

23 Section 4. Not Applicable to Managed Care Organizations. (1) A managed care

1 organization may elect to reimburse in accordance with this administrative regulation for
2 a service or item covered pursuant to 907 KAR 1:180 and this administrative regulation.

3 (2) A managed care organization shall not be required to reimburse the same
4 amount as established in this administrative regulation for a service or item covered
5 pursuant to 907 KAR 1:180 and this administrative regulation.

6 Section 5. Federal Financial Participation. A provision or requirement established in
7 this administrative regulation shall be null and void if the Centers for Medicare and Med-
8 icaid Services:

9 (1) Denies federal financial participation for the provision or requirement; or

10 (2) Disapproves the provision or requirement.~~[during the visit billed, and no additional~~
11 ~~amounts may be requested from the recipient, the Medicaid program, or any other~~
12 ~~source. This shall not, however, preclude the collection of appropriate amounts from lia-~~
13 ~~ble third party sources which shall serve to reduce the liability of the cabinet.]~~

907 KAR 1:190

REVIEWED:

Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on September 23, 2013 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by September 16, 2013 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until September 30, 2013. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, tricia.orme@ky.gov, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601; Phone: (502) 564-7905; Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:190
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements related to freestanding birth center services. Freestanding birth centers are authorized to provide delivery services for deliveries that are not complicated.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements related to freestanding birth center services. Reimbursing for freestanding birth centers is mandated by Section 2301 of the Affordable Care Act.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing DMS's reimbursement provisions and requirements related to freestanding birth center services.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing DMS's reimbursement provisions and requirements related to freestanding birth center services.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: This amendment increases reimbursement for freestanding birth centers by paying \$1557, rather than \$365, to a freestanding birth center as the facility component of freestanding birth center services. DMS will continue to pay a professional component (to the rendering provider) based on reimbursed established in DMS's physicians' services reimbursement regulation (907 KAR 3:010.) Additional amendments including inserting necessary definitions for clarity; inserting general provider requirements (such as program integrity or related); establishing that managed care organizations are not required to reimburse the same amount as DMS reimburses; and establishing that policies are contingent upon receipt of federal funding/federal approval.
 - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to elevate DMS's reimbursement for freestanding birth center services to a level that is compatible with other states and will provide an incentive to freestanding birth centers to participate in the Medicaid program. Reimbursing for deliveries in a freestanding birth center (which are non-complicated deliveries) are less expensive than reimbursing for the same

- delivers in an inpatient hospital.
- (c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by reimbursing for freestanding birth centers at a level compatible with other states and by encouraging such deliveries as they are less expensive than deliveries in an inpatient hospital.
 - (d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by reimbursing for freestanding birth centers at a level compatible with other states and by encouraging such deliveries as they are less expensive than deliveries in an inpatient hospital.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Freestanding birth centers; physicians, advanced practice registered nurses, registered nurse, and physician assistants who would work for a freestanding birth center; and Medicaid recipients who would like to have a baby in a freestanding birth center as opposed to an inpatient hospital would be affected by the administrative regulation. DMS understands that currently there are no freestanding birth centers licensed or operating in Kentucky.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No actions are required by the amendment.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed by the amendment.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Freestanding birth centers and providers who provide services through the centers will benefit by being reimbursed for the services. Medicaid recipients will benefit by having an option to have a baby in a freestanding birth center rather than in an inpatient hospital. Freestanding birth centers provide a homelike setting for deliveries and perform deliveries in a manner that is less medically-oriented or rigid in protocol as inpatient hospitals. For example, freestanding birth centers typically do not induce or augment labor with oxytocin, do not provide continuous electronic fetal monitoring, do not provide epidural anesthesia, do not provide narcotics, and do not perform surgical deliveries.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The cost is indeterminable as currently, there are no freestanding birth centers operating in Kentucky. One (1) entity submitted an application for certificate of need (CON) in the autumn of 2012, a CON hearing was conducted in

March 2013 and as of the filing of this administrative regulation, no decision had been made to grant or deny the certificate of need request. DMS understands that the applicant does not intend, if a CON is granted, to provide services to Medicaid recipients.

- (b) On a continuing basis: The cost is indeterminable. Please see the above response to question (5)(a).
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching state funds appropriated in the biennium budget.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding will be necessary to implement the amendment.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither imposes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation Number: 907 KAR 1:190

Agency Contact Person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. Section 2301 of the Affordable Care Act which was codified into 42 USC 1396d(a)(28), 42 USC 1396d(l)(3), and 42 USC 1396a(a)(30)(A).
2. State compliance standards. KRS 194A.050(1) states, "The secretary shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law, or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs."

KRS 205.520(3) states: "... it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396d(l)(3)(C) states:

"A State shall provide separate payments to providers administering prenatal labor and delivery or postpartum care in a freestanding birth center (as defined in subparagraph (B)), such as nurse midwives and other providers of services such as birth attendants recognized under State law, as determined appropriate by the Secretary. For purposes of the preceding sentence, the term birth attendant means an individual who is recognized or registered by the State involved to provide health care at childbirth and who provides such care within the scope of practice under which the individual is legally authorized to perform such care under State law (or the State regulatory mechanism provided by State law), regardless of whether the individual is under the supervision of, or associated with, a physician or other health care provider. Nothing in this subparagraph shall be construed as changing State law requirements applicable to a birth attendant."

- 42 U.S.C. establishes that medical assistance (Medicaid) includes "freestanding birth center services (as defined in subsection (l)(3)(A)) and other ambulatory services that are offered by a freestanding birth center (as defined in (l)(3)(B)) and that are otherwise included in the plan."

42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to:

"... provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to

utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services”

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The requirements are not stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 1:190

Agency Contact Person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be affected by this amendment.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment will generate no revenue for DMS.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment will generate no revenue for DMS.
 - (c) How much will it cost to administer this program for the first year? The cost is indeterminable as currently, there are no freestanding birth centers operating in Kentucky. One (1) entity submitted an application for certificate of need (CON) in the autumn of 2012, a CON hearing was conducted in March 2013 and as of the filing of this administrative regulation, no decision had been made to grant or deny the certificate of need request. DMS understands that the applicant does not intend, if a CON is granted, to provide services to Medicaid recipients.
 - (d) How much will it cost to administer this program for subsequent years? The cost is indeterminable. Please see the above response – in paragraph (c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): _____

Expenditures (+/-): _____

Other Explanation: